

Remarks

The various parts of the Office Action (and other matters, if any) are discussed below under appropriate headings.

Claim Rejections - 35 USC § 102

Claims 1-4, 6-16 and 22-25 as previously presented were rejected as being anticipated by *Glossop* (US 6,203,543). Withdrawal of the rejection is respectfully requested for at least the following reasons.

In the final Office Action, the Examiner, while commenting on applicant's previous arguments, states that *Glossop* has a longitudinal centerline along the axis of the device and whereby a line of the guide or the operative section would still be offset.¹ Initially, it is respectfully noted it is difficult to ascertain exactly what the Examiner considers to be the "longitudinal centerline along the axis of the device".

As discussed in MPEP §707 and 37 CFR §1.104(C)(2):

In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. *The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified* (emphasis added).

Since *Glossop* does not expressly identify the claimed features of the invention, it is respectfully requested that the Examiner provide further detail that identifies the portions of *Glossop* that allegedly disclose the claimed features.

Moreover, a *longitudinal centerline of the device*, as stated by the Examiner in the final Office Action, is not relevant to claim 1. Claim 1 recites a fixing device that includes:

- a) an operative section having a longitudinal axis and at least one guide for a securing element; and
- b) a *longitudinal centerline of the guide* offset from a *longitudinal centerline of the operative section*.

¹ See page 3 of Office Action dated November 2, 2006

The relative orientation of the two centerlines is with respect to the *operative section* and the *guide*, and not the device itself. No mention is made in claim 1 with respect to a longitudinal centerline of the *device*, as asserted by the Examiner.

Since the Examiner does not specifically identify which portions of *Glossop* allegedly still teach the claimed features of the present application, it is assumed that the Examiner still considers both Fig. 1 and 2D to teach all the features of the claims.

Beginning with Fig. 1 of *Glossop*, the Examiner previously considered the lumen within the sleeve 14 to be the guide, and the operative section to include both the end of the sleeve 14 and the threaded end 22 of the screw 12. The Examiner does not identify a longitudinal centerline of the operative section or of the guide. From this omission alone, the Examiner has failed to identify all the features of claim 1 disclosed by the reference.

In the interest of advancing prosecution, however, it is assumed that a longitudinal centerline of the alleged guide is along the centerline of the screw 12 (the screw 12 resides within the guide and therefore they both are presumed to have the same centerline). Further, a longitudinal centerline of the alleged operative section also is presumed to have the same centerline as the screw. This is a reasonable interpretation, as one skilled in the art viewing Fig. 1 of *Glossop* would recognize that the sleeve 14 is a cylinder having a length and a diameter. Similarly, the screw 12 also is an elongated member having a length and diameter. Thus, the alleged operative section (i.e., the end or distal portions of the sleeve and screw) comprises two elongated members each having a length and a diameter, wherein a centerline of both coincide with one another (i.e., along a rotationally symmetric axis of the respective members). A longitudinal centerline of such shape cannot reasonably be interpreted to be anything other than a centerline running through a center point of the cylinder and screw and extending along a length of the cylinder.

As is evident from above and Fig. 1 of *Glossop*, the centerline of the alleged operative section coincides with the centerline of the alleged guide. Thus, Fig. 1 does not teach a *longitudinal centerline of the guide* offset from a *longitudinal centerline of the operative section*, as recited in claim 1. Similar comments apply to independent claim 22.

With respect to Fig. 2D of *Glossop*, the Examiner previously identified the sleeve 14 and the lower two-thirds of the bone screw 12 as the operative section, and an upper portion of the bone screw 12 as the securing element. With respect to the guide, the Examiner previously identified two components that may be interpreted as a guide;

a slot within clamp 20 and the lumen within sleeve 14. Again, the Examiner does not identify a longitudinal centerline of this alleged operative section or alleged guide.

Regarding the alleged operative section of Fig. 2D, the sleeve 14 and portion of the bone screw 12 both are elongated members having a length and a diameter. A longitudinal centerline of this alleged operative section lies along the rotational axis of the bone screw 12. For the same reasons noted above with respect to Fig. 1, this is a reasonable interpretation of the longitudinal centerline as interpreted by one skilled in the art.

The leftmost slot (a first alleged guide) is formed as a cylindrical bore having a diameter and depth (or length). A longitudinal centerline of this leftmost slot lies parallel to the cylindrical bore and along the center of the bore. As is evident from Fig. 2D, this longitudinal centerline coincide with the longitudinal centerline of the alleged operative section. Clearly, the combination of the leftmost slot, the bone screw 12 and the sleeve 14 do not teach a longitudinal centerline of a guide is offset from the longitudinal centerline of an operative section, as recited in claim 1.

Referring now to the rightmost slot (the second alleged guide) of Fig. 2D, this slot does not read on the guide as recited in claim 1. More specifically, claim 1 recites that the *operative section includes at least one guide for at least one securing element*, wherein the *guide is a bore and/or recess formed in the operative section*. The rightmost slot of Fig. 2D is not formed in the alleged operative section, but in a clamp 20. This clamp is used for attaching an object 8 to the securing device of *Glossop*. This clamp 20, however, is not an operative section configured such that it can be inserted into an object. Clearly, the rightmost slot within clamp 20 is not a guide of an operative section, as recited in claim 1.

With respect to the lumen within the sleeve, this is analogous to the lumen of Fig. 1 discussed above. For at least the same reasons as discussed with respect to Fig. 1, this lumen does not include a longitudinal centerline offset from a longitudinal centerline of the operative section.

Accordingly, neither Fig. 1 nor Fig. 2D of *Glossop* have been shown to teach all the features of claims 1 and 22. Claims 2-4, 6-16 and 23-25 directly or indirectly depend from claim 1 or claim 22 and, therefore, can be distinguished from *Glossop* for at least the same reasons.

Accordingly, withdrawal of the rejection of claims 1-4, 6-16 and 22-25 is respectfully requested.

Conclusion

In view of the foregoing, request is made for timely issuance of a notice of allowance.

Respectfully submitted,

RENNER, OTTO, BOISSELLE & SKLAR, LLP

By /Kenneth W. Fafrak/
Kenneth W. Fafrak, Reg. No. 50,689

1621 Euclid Avenue
Nineteenth Floor
Cleveland, Ohio 44115
(216) 621-1113

M:\S\ SCHW\P\P0154\P0154US-R06.wpd